

HIGH COURT OF CHHATTISGARH: BILASPUR
S.B. HON'BLE SHRI VIJAY KUMAR SHRIVASTAVA, J
CIVIL REVISION NO.115/2004

Applicant

Smt Chandravati Devi Dani
aged about 74 years,
Wd/o Ram Kumar Dani
R/o Danipara, Purani Basti
Raipur Tahsil and Dist-Raipur

Vs.

Respondents

- 1) Sushil Kumar, S/o Ram Sevak
Gouram, aged about 57 years
R/o. Raipur and 80-B
Pocket-A Group 11,
Dilshod Garden Delhi.
- 2) Chhattisgarh Khadi Ashram,
Bajjnathpara, Raipur Through
Vyavasthapak, Bajjnathpara,
Raipur

PRESENT:

Shri Ratan Pusty, Counsel for the applicant

Shri BP Sharma, Counsel for the respondents

ORDER

(Passed on 17th January 2006)

This is a revision under Section 23-E of the Chhattisgarh Accommodation Control Act, 1961 (henceforth "the Act") directed against the order dated 04/06/2004 passed by Rent Controlling Authority Raipur (henceforth "the Authority") in Case No.5/90 (8) 90-91, vide which the Authority has dismissed the

application filed by the applicant for recovery of possession of suit accommodation filed under Section 23-A (b) of the Act.

2) Applicant claiming herself to be the landlady of the suit accommodation under Section 23-J of the Act, filed an application under Section 23-A of the Act for recovery of possession of suit accommodation which is in possession of respondents/ tenants. The suit accommodation has been let for non-residential purpose. Applicant initially filed the application on the ground of bona fide requirement for her business and for the business of her major son. Subsequently, the application has been amended and in place of her major son, the name of her grand son Ashish Kumar Dani has been substituted. Respondents opposed the application. Both the parties adduced evidence in support of their case.

3) Learned Authority held that Ashish Kumar Dani had his own business of Medical Store; he is not dependent on the applicant and is not a member of her family. For the requirement of grand son Ashish, applicant is not entitled for recovery of possession of suit accommodation, hence vide impugned order, the Authority dismissed the application.

4) Section 23-A(b) of the Act reads as below :-

"that the accommodation let for non-residential purposes is required "bonafide" by the landlord for the purpose of

continuing or starting his business or that of any of his major sons or unmarried daughters, if he is the owner thereof or for any person for whose benefit the accommodation is held and that the landlord or such person has no other reasonably suitable non-residential accommodation of his own in his occupation in the city or town concerned :

Provided that where a person who is a landlord has acquired any accommodation or any interest therein by transfer, no application for eviction of tenant of such accommodation shall be maintainable at the instance of such person unless a period of one year has elapsed from the date of such acquisition."

5) From bare reading of the above provision, it is manifest that landlord has right to file an application for possession of the non-residential accommodation for the purpose of continuing or starting his own business or business of any of his major sons or un-married daughters if he is the owner thereof or for any person for whose benefit the accommodation is held and the landlord or such person has no other reasonable, suitable non-residential accommodation in their possession.

6) Smt Chandravati Devi Dani, the applicant in her statement deposed that for business of her grand son, she wants to get the suit accommodation vacated. She did not depose that she had any business, or she wants to start any business. From her statement, it appears that she wants the suit accommodation for her grand son.

Ashish Kumar Dani although denied that he has any business of his own; but from the evidence of Sushil Kumar Gautam, non-applicant and Manmohan, drug inspector and also from the statement of applicant Chandravati Devi Dani who admits that on enquiry Ashish unveiled that he goes to medical shop. Further, in her statement, she also admits that Ashish Kumar Dani has started business in the name of Golden Medical Store although subsequently she denied, it was established that Ashish Kumar Dani had his own business. Learned authority also minutely appreciating the evidence held that Ashish Kumar Dani is not dependent on the applicant and he had his own business in the name of Golden Medical Store.

7) Section 23-A(b) of the Act refers to major son or unmarried daughter or for any other person for whose benefit the accommodation is held. Therefore, it cannot be held that the provision includes grand sons within the ambit of major sons ofcourse, if the accommodation is held for the benefit of grandson, landlord may claim it. But in that case, it is necessary for the applicant if she claims the accommodation for benefit of grand son, or any other person, she must plead that the accommodation is held for the benefit of that person and thereafter it is incumbent upon her to prove the same. Herein the instant case, applicant did not made any averment that for the benefit of Ashish the accommodation is held nor in her statement or other evidence, the said ingredients have been proved.

Therefore, in absence of pleading and prove for the need of her grand son, she was not entitled for obtaining possession of the suit accommodation for business of her grand son.

8) No other question has been raised during the argument.

9) I am of the opinion that the impugned order passed by the Authority, does not call for any interference by this Court. Therefore, the revision is liable to be dismissed and is dismissed accordingly.

10) Parties to bear their own costs.

Sd/-
V.K.Shrivastava
Judge

padma